(37,465)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 768

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Record from district court of the United States, District of Montana.	1
Caption	1
Complaint	2
Demurrer to complaint	8
Order overruling demurrer	9
Opinion, Bourquin, J., on demurrer	10
Answer	17
Demurrer to answer	34
Order on demurrer to answer	36
Opinion, Bourquin, J., on demurrer to answer	37
Amended answer	40
Plaintiff's motion for judgment on pleadings	57
Order granting motion for judgment on pleadings	58
Ruling, Bourquin, J., in re interest	59
Order for interest at Montana rate and directing entry of judgment nunc pro tunc, etc	60
Judgment	60
Assignments of error	62

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 27, 1933

	Page
Petition for appeal	64
Order allowing appeal	66
Stipulation in re supersedeas bond	67
Bond on appeal	68
Citation and service	71
Praecipe for transcript of record	73
Clerk's certificate	76
Proceedings in United States circuit court of appeals, ninth circuit	79
Order of submission	81
Order directing filing of opinion and judgment	82
Opinion, James, J.	82
Judgment	95
Order denying petition for rehearing	96
Application for stay of mandate	96
Order staying issuance of mandate	98
Clerk's certificate	99
Order allowing certiorari	100

NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

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In the District Court of the United States for the District of Montana.

No. 527.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY, a Corporation,

Defendant.

BE IT REMEMBERED, that on the 23d day of August, 1929, plaintiff filed its complaint herein, in the words and figures following, to wit:

In the District Court of the United States for the District of Montana, Butte Division. [1*]

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY, a Corporation,

Defendant.

COMPLAINT.

The plaintiff complains and alleges:

1. That the defendant is, and at all times herein mentioned was a corporation duly incorporated under the laws of Montana; and during all of said otimes was the owner of a railroad extending from Butte to Anaconda, Montana.

2. That between January 1, 1918, and September 27, 1918, inclusive, said railroad was operated under Federal control, and for the remainder of the Federal control period, to wit; from September 28, 1918, to February 29, 1920, inclusive, the defendant privately operated the same and engaged as a common carrier in general transportation, and during said time connected with the Northern Pacific Railway, a railroad under Federal control.

*Page-number appearing at the foot of page of original certified Transcript of Record.

3. That during said last-mentioned period the defendant received from the operation of said railroad, railway operating revenues amounting to $2,079,693.08; and that during said period the railway operating expenses, railway tax accruals, and net debits from equipment and joint facility rents together amounted to $1,840,167.95; by reason whereof defendant during said period received from the operation of said railroad a net railway operating income of $239,525.13.

4. That on February 9, 1922, the Interstate Commerce Commission, by a general ruling (Construction of the Word "Deficit," 66 I. C. C. 765, Finance Docket No. 1600), construed the word "deficit," as used in paragraph (a) of Section 204 [2] of the Transportation Act, 1920, to mean a deficiency or decrease in income under private operation in the Federal control period, as compared with the average income for corresponding portions of the test period, to wit: the three-year period ending June 30, 1917.

5. That thereafter, and prior to March 20, 1925, defendant made and filed with the Interstate Commerce Commission its claim wherein and whereby it asserted that under the provisions of said Transportation Act, and during the last-mentioned period, it sustained a deficit in the private operation of said railroad amounting to the sum of $600,527.35; and demanded that said Commission certify to the Secretary of the United States Treasury its alleged deficit in said sum.

6. That thereafter and on March 20, 1925, the Interstate Commerce Commission adjusted the